

# **The Makuleke Land Claim: Power relations and CBNRM in a South African case study**

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## **1. Introduction**

The Pafuri Triangle lies in the northernmost corner of South Africa bordering upon Zimbabwe and Mozambique. Bounded by the Limpopo River in the north and the Levhuvu River in the south, it contains the lion's share of the Kruger National Park's<sup>1</sup> (KNP) biodiversity. It is from this land that the Makuleke community, then numbering some 1500 people, was forcibly removed in 1969 (Harries: 1987). Most of their land was included into the KNP and the Madimbo Corridor, a military *cordon sanitaire* along the Zimbabwean border<sup>2</sup>. The Makuleke were resettled some fifty km to the south in the emergent homeland of Gazankulu<sup>3</sup>, thereby marking the end of a long struggle for control over the Pafuri with the conservationists<sup>4</sup>.

Almost thirty years later the new South African government<sup>5</sup> passed the Restitution of Land Rights Act (1994). This legislation was seen as one of the government's key instruments for addressing racially skewed patterns of land ownership generated over the last century of white rule and makes possible the restoration of land lost as a result of racial legislation or practice reaching as far back as 1913<sup>6</sup>. Many of the staggering 54 thousand land claims registered by the end of 1998 (DLA, 1998: 17) related to conservation land and put access to prime game viewing land within realistic reach of previously marginalised communities like the Makuleke.

In 1994, in expectation of the land tenure reform legislation passed later that year, a private sector game lodge operator approached the Makuleke with a proposal for a joint venture in the Pafuri Triangle. The basic idea was that they could use the possibility of a land claim as leverage to gain the consent of the National Parks Board (NPB)<sup>7</sup> for access to the land. At that time the NPB was under significant political pressure to 'transform' itself and its relations with neighbouring people – and the Richtersveld contractual national park was seen by many as the way forward in South African nature conservation. It was consequently not difficult to obtain the political support needed for the Makuleke's 'Game Lodge Project', as it became known.

Through GEM (Group for Environmental Monitoring), an NGO involved in land and conservation issues, and the Minister of Land Affairs, the participation of a German governmental development agency, the GtZ<sup>8</sup>, was obtained. In 1995 the GtZ assessed the game lodge proposal and allocated the funding needed for the associated planning and training processes. A partnership, dubbed TRANSFORM<sup>9</sup>, was established between the GtZ and the Department of Land Affairs (DLA) to drive forward the Makuleke's Game Lodge Project and two additional pilot projects in other parts of the country.

In November that year the Minister actually visited Makuleke stating that he wanted to see their game lodge up and running the following year. Everything seemed in place for a novel CBNRM project – but towards the end of 1996 everything had changed. The Makuleke were locked into tough negotiations with the NPB over their land claim and the GtZ/TRANSFORM process at Makuleke had largely ground to a halt.

What happened? It is here argued that:

if

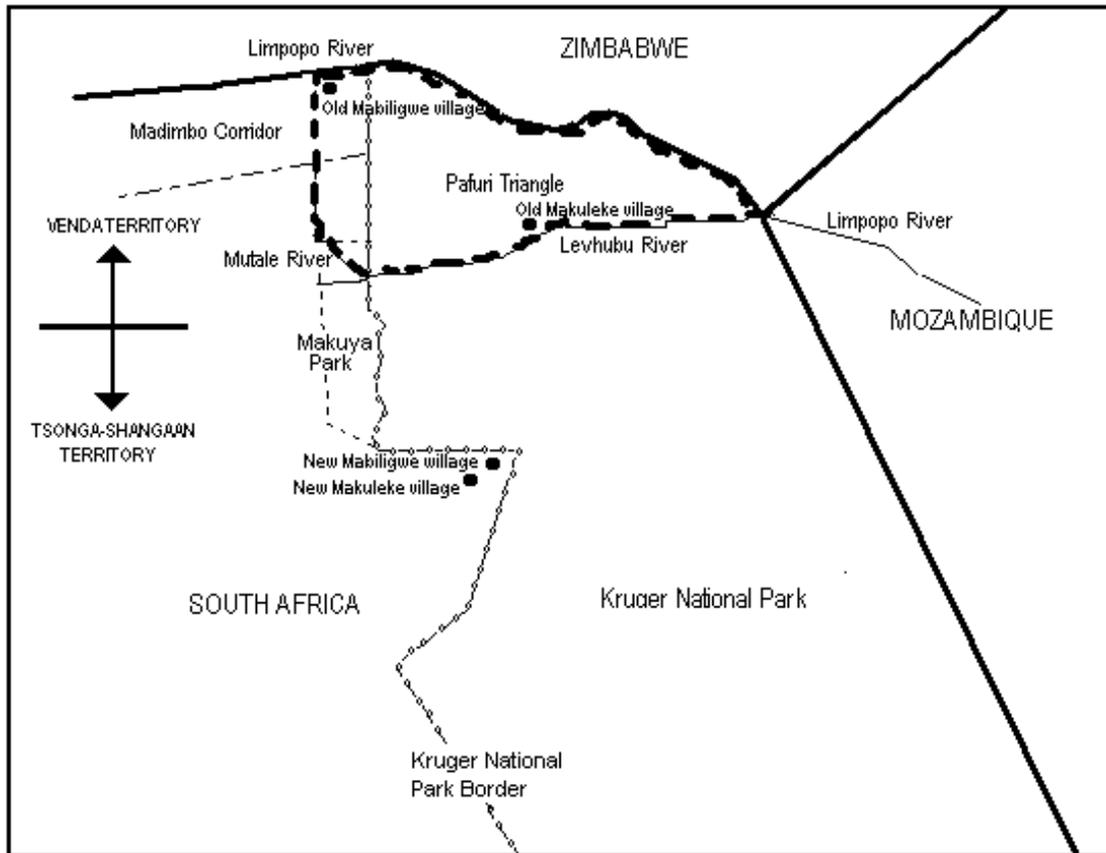
- 1) CBNRM or 'participation' interventions do not give explicit recognition to the existence of ongoing conflicts of interest between communities, on the one hand, and conservation interests (including the state, NGOs and other interest groups), on the other,
- 2) and if those conflicts of interests are not dealt with, formally and informally, by structuring the associated institutions and processes accordingly,

then

- 3) existing power relations between parks and people are likely to be strengthened to the detriment of the people, 'project success' and, eventually, conservation itself.

This paper accordingly investigates the power relations that existed between the Makuleke and the NPB and how these were impacted upon by TRANSFORM's community development intervention at Makuleke.

Figure 1: Extent of the Makuleke land claim



## 2. The roleplayers and their objectives

### a. Introduction

The core roleplayers directly affected by the land claim were the Makuleke Communal Property Association and the then NPB. With respect to the immediate process around the land claim it is possible to identify a range of secondary role players. The most important of these were the DLA (Department of Land Affairs) and the LCC (Land Claims Commission), GtZ/TRANSFORM, the LRC (Legal Resources Centre) and FoM (Friends of Makuleke).

### b. The Makuleke Communal Property Association (CPA)

The Makuleke CPA consists of all people that had lived in the Pafuri as well as later additions to the community. The CPA acted as a legal person in the land claim negotiations and the currently houses the ownership of the Pafuri Triangle. The CPA's objectives were to:

- regain ownership of all the land they had lost;

- maximise sustainable community benefit from the land through its development.

From the outset the CPA was prepared to maintain the conservation status of the land as an integral part of the KNP, a position that was based on a recognition that unfettered ownership would be politically unfeasible. In return for this concession the CPA wanted however to be able to extract as much benefit as possible through the commercial development of the area.

The Makuleke are an exceptionally cohesive ‘community’<sup>10</sup>. Their internal organisation further displays a marked degree of institutional ‘hardness’ and is able to cope well with the classic internal community tensions and frictions. In the course of the land claim these were practically always subordinated to the need to show a ‘united face’ to the outside<sup>11</sup>. What appears to be a tradition of sustained internal negotiation seems to have contributed to the Makuleke’s ability to deal with the complex politics around their land claim.

### **c. The National Parks Board (NPB)**

The NPB is a statutory body acting as the custodian of South Africa’s national parks. It consists of a Board of Trustees that appoints a CEO to head up the organisation. As the ‘user department’ the NPB had the task of negotiating a settlement with the Makuleke<sup>12</sup>. In this it had a complex set of objectives. The NPB wanted to:

- settle the claim ‘without setting a precedent’<sup>13</sup>. There were fears that the KNP could ‘disintegrate’ as a result of subsequent land claims should the Makuleke regain actual ownership of the land<sup>14</sup>.
- maintain NPB control over the Pafuri Triangle because of its high conservation value and its strategic location on the intersection of the South African, Zimbabwean and Mozambican borders<sup>15</sup>.
- restrict community interests (and commercial development) the periphery of the KNP, preferably to bufferzones like the Makuya Park, and to maintain the Pafuri Triangle as a ‘wilderness area’ (Robinson, 1996: 5).

The backdrop to these objectives consists of various perceived threats to conservation, one of which related to fears of the ‘disintegration’ of the KNP. The claim”, according to a senior nature conservation official, could set “a precedent that will tear the Kruger apart.<sup>16</sup>” “If the Makuleke claim is upheld in respect of land inside the park, all conservation areas will be under threat,” a senior conservationist further stated to the media. “Conservation status will not be worth the paper it is written on” (Nell, 1997: 4).

Towards the end of the land claim negotiations the NPB announced a new policy on land claims. In essence the new position entailed that the NPB no longer thought it necessary to actually own the land in order to meet its biodiversity conservation objectives.

### **The NPB's TFCA development plans**

*As far back as 1992 the NPB (Hall-Martin & Lorimer. 1995: 2) and provincial conservation authorities (Nn Tvl Environmental Conservation, 1995) had been working towards an integrated regional ecotourism development plan. It foresaw the extension of a 'bufferzone' along the western periphery of the KNP southwards from the Makuya Park and the linking of the Pafuri Triangle with the Madimbo Corridor. From there, through a network of reserves, tribal and private land, it would be linked to the proposed Vhembe/Dongola National Park, conservation areas in south-western Zimbabwe and the Tuli Block in Botswana: collectively constituting the proposed one million ha 'Limpopo River Conservation Area'. An intergovernmental planning process furthermore foresaw the linkage, through vast tracts of CAMPFIRE-like managed multiple use areas, of the KNP to the Zinave and Bahinye national parks in Mozambique and the Ghona-rhe-Zhou National Park in Zimbabwe.*

*For many conservationists the implementation of this map, or vision of a possible future, required the maintenance if not hardening of existing KNP boundaries. NPB control over strategic pieces of land had to be maintained and the conservation estate expanded onto tribal land – not the other way around. Understandably the Pafuri Triangle was seen as the 'heart' of what was to be a sprawling multi-national transfrontier conservation area.*

*From a conservation perspective, therefore, the stakes were high. Apart from setting a dangerous precedent the Makuleke claim therefore represented a serious and sudden obstacle to well developed plans. Their claim not only included the whole of the Pafuri, but effectively straddled the KNP's access to the rest of the Madimbo Corridor. This complex of factors is assumed to have contributed to a hardening in the NPB's attitude toward the Makuleke.*

### **d. The Land Claims Commission (LCC) and the Department of Land Affairs (DLA) Directorate Restitution**

LCC<sup>17</sup> is responsible for the facilitation of land claims and does so with a high degree of statutory independence. Its objective, therefore, is to give expression to the intentions embodied in the land reform legislation – something that presupposes somewhat of a bias toward the claimants.

In implementing the legislation the LCC has to be guided by the DLA's policy on land claims. The Makuleke claim took place however in somewhat of a policy vacuum. There were no clear precedents and the LCC accordingly expected the DLA to develop an appropriate policy response - a responsibility that was vested in the Directorate: Restitution.

At the same time, even though the NPB negotiated directly with the Makuleke as the user department, the DLA was also the principal respondent in the land claim. In the final instance it was responsible therefore for the development of a *joint position* on behalf of all affected state departments<sup>18</sup>.

Given the high degree of ambiguity created by these cross-cutting responsibilities, it is difficult to ascribe clear objectives to the DLA. This was reflected in fact by the somewhat hesitant, uncertain approach toward the Makuleke land claim displayed by the department at the outset of the negotiations.

#### **e. The TRANSFORM Programme: The GtZ and the DLA Directorate Settlement Support**

This ambiguity was compounded by the fact that yet another DLA directorate, 'Settlement Support', was involved at Makuleke under the auspices of the TRANSFORM Programme<sup>19</sup>. TRANSFORM consisted of a 'joint venture' between the Directorate Settlement Support and the GtZ, the Federal German technical aid agency<sup>20</sup>.

TRANSFORM was initiated as a support programme for three 'pilot' communities (Makuleke, the Richtersveld and Kosi Bay). In all three instances conservation land and community ownership (or claims of ownership to that land) was involved and TRANSFORM had the formal objective of 'empowering' the communities to manage their natural resources.

At Makuleke this objective was expressed by GtZ financial and technical support for the Ecotourism Project and the associated Training Project. The GtZ's subsequent reallocation of this funding away from restitution related support exposed TRANSFORM and its objectives to a credibility crisis.

#### **f. The Legal Resources Centre (LRC) and Friends of Makuleke (FoM)**

The LRC and FoM provided the Makuleke with much needed technical support in their negotiations with the NPB. The LRC is an NGO that provides a free legal service to 'previously disadvantaged' communities and people, a large percentage of which revolves around land claims and land tenure reform.

The Makuleke leadership had also entered an alliance with a group of external roleplayers that were eventually consolidated into what was called 'Friends of Makuleke' (FoM). Importantly, it was the Makuleke that decided on the composition of this structure and had selected the individual members<sup>21</sup>.

FoM's formal objective was to support the Makuleke in their land claim. A less explicit objective is expressed by the fact that most of the FoM role-players had strong links with the NGO movement toward 'community participation in conservation' or at the very least operated within the CBNRM paradigm. FoM thereby acquired the secondary, more implicit objective of wanting to 'make CBNRM work'.

As was the case with GtZ/TRANSFORM, FoM's objectives were also questioned. The fact, for example, that one of the FoM roleplayers had initially approached the Makuleke with a *business* proposal<sup>22</sup> related to their land claim was later to have a negative impact on FoM's credibility.

#### **g. Conclusion**

As will become evident in the course of this paper it is often difficult to ascribe clear 'objectives' to all role players. This is because any particular role player may have formal, explicit objectives as well as informal, less explicit objectives – and it is often not clear which of the two take precedence in practice. The existence of supposed 'hidden objectives' are in fact directly linked to 'credibility' and a role player's standing could be undermined by questioning its objectives.

An irony of the often highly conflictual process described further below is that most of the roleplayers - including the NPB - perceived of, or portrayed, themselves as acting 'in Makuleke interests'. This was problematic in as much as it served to obscure the conflicting objectives represented most clearly by the land claim negotiations.

### **3. The land claim and community development process**

#### **a. Introduction**

For the purposes of this paper the process around Makuleke and their land claim are here discussed under the headings 'pre-negotiation', 'negotiation' and 'post-negotiation' phases.

Whereas the pre-negotiation phase has a somewhat arbitrary or vague starting point, it has a clear end – namely the formal publication of their land claim by the LCC in October 1996. This event clearly marked the end of the informal bargaining that had taken place between the Makuleke and the NPB and the initiation of a rigorously facilitated and formal negotiation process under the auspices of the LCC.

The formal negotiation phase accordingly lasted from November 1996 until approximately April/May 1998 – close on two years of hard bargaining. The post-negotiation phase is also dealt with in a somewhat open-ended manner without providing a clear cut-off point. The importance here lies not so much with the timeline, but with the distinct characteristics of each phase. These are now discussed in more detail.

#### **b. Pre-negotiation phase**

In 1994 it was assumed that NPB support for the Ecotourism Project would be forthcoming due to the political pressure faced by the organisation to 'transform' itself and its relations with neighbouring people (Koch, 1994: 10). The initial NPB response to the proposal was indeed constructive, even if carefully so. By March the following year, however, the NPB Board of Trustees had been reconstituted along more representative lines.

Ironically the restructuring of the Board coincided with the first indications of a more confident hard-line position on the Makuleke. Clear indications were now for example given that the NPB was prepared to consider only a minimalist deal for a community game lodge with restricted traversing rights in the KNP. At the same time

the LRC had advised the Makuleke that they had a *prima facie* case for actual restitution of the Pafuri Triangle. This meant that the ‘talks’ about the establishment of a community game lodge could actually compromise their interests. The Makuleke accordingly decided that they would continue their negotiations with the NPB only after a formal land claim had been registered and the talks were by mutual consent temporarily suspended.

At about this time the Makuleke were embroiled in what was dramatically dubbed “the biggest environmental controversy since St. Lucia (Koch, 1995:12)”. A diamond-mining consortium, the Duo Corporation<sup>23</sup>, had managed to obtain prospecting rights in the Madimbo Corridor, the military *cordon sanitaire* between South Africa and Zimbabwe abutting the Pafuri Triangle. Not only did Duo intend mining in what was considered a provincial nature reserve<sup>24</sup>, but their plans foresaw *open cast* mining of the fossil beds of the Limpopo river. Conservationists were horrified and in the ensuing media battle the conservation NGOs, notably WESSA (Babich, 1995: 1), were mobilised in support of the NPB’s tourism development option for the region.

Significantly the Makuleke claim included a small section of the Madimbo Corridor and the Makuleke initially showed an interest in the mining option on this land. This raised the spectre open-cast mining down the Limpopo river, through the KNP all the way to the Mozambican border and added to the thickening atmosphere of suspicion and threat. As Duo Corporation and the NPB began to vie for the support of the various chieftaincies in the affected area, the NPB managed to establish an ‘alliance’ with Chief Jack Mutele, the traditional leader of one of the communities claiming land in the Madimbo Corridor. Though Mutele was later to switch sides (Cameron, 1996: 1), he initially supported the NPB and was prepared to have his land included into the KNP under a contractual park agreement<sup>25</sup>. Importantly ‘his’ land was largely contiguous with that claimed by the Makuleke. Mutele had, in fact, lodged a *counter-claim* that included not only a large section of the Madimbo Corridor, but the entire Pafuri Triangle<sup>26</sup>.

Madimbo never yielded any diamonds. The accompanying media battle nonetheless resulted in a victory of sorts for the conservation establishment and contributed to the marginalisation of the Makuleke in the public eye. In the same period a DLA report further portrayed the Makuleke land claim as being without substance and recommended limited compensation as opposed to actual restitution of land<sup>27</sup>.

In an increasingly tense situation micro-politics began to predominate. Before long the word was out that the Makuleke land claim was not only ‘weak’, but ‘greedy’ in its extent and driven by ‘unscrupulous’ private sector interests. “There are palefaces behind the claim man. They are manipulating the Makuleke. Their claim is worthless<sup>28</sup>.” Progressively opinions such as these were finding their way into the media<sup>29</sup> and thereby into the political domain. This dynamic reduced Makuleke expectations as to the potential outcome of their land claim and effectively weakened their bargaining position. Unbeknown to the Makuleke what was to become a hard distributive bargaining process<sup>30</sup> had already commenced.

At this crucial point the GtZ/TRANSFORM programme manager was replaced, a step that coincided with changes in the approach to the Makuleke process. On March 1996 a new community level ZOPP<sup>31</sup>, which for the first time included the NPB as a 'stakeholder', was conducted at Makuleke. It had the *external* objective of 'broadening' the scope of TRANSFORM's involvement and resulted in the reallocation of the original funding to a range of development activities. The running costs of a project office at Makuleke were still to be covered, a luxury that was to provide the Makuleke with an opportunity to greatly improve and develop their organisational capacity. The Ecotourism Project and the associated training process were however shelved 'until after the land claim'. Various reasons were given why this had to be the case, including that the outcome of the land claim was uncertain.

From a Makuleke perspective the reorientation of the funding represented a radical departure from the planning process to date and created a delivery crisis on the ground. As Gibson Maluleke, member of the Tribal Authority Executive<sup>32</sup>, put it during a meeting with the GtZ (4/5/96):

*Minister Hanekom told the people he wants to see the ecotourism project ready in November this year. Then we looked at development on a broader scale in your way. Now, because of the planning, there are delays with the ecotourism project that was initially given first priority. It seems we will keep on talking for centuries. People are even using words like 'nincompoop'. When the people begin to doubt the leadership they lose confidence.*

Not only did the planning for the Ecotourism Project thereby grind to a halt, but, with much fanfare, seven young Makuleke students had been registered for national diplomas in nature conservation and business studies. Though this was a long-term project that would last well beyond the land claim it too could no longer be funded<sup>33</sup>. Eventually, however, the GtZ relented and made limited funding available for the Training Project.

There are many possible factors that could have contributed to what had happened. Bureaucratic and institutional problems, among others, had caused delays in the availability of funding (GtZ 1996: 4). On its own, however, this does not offer an adequate explanation. Whatever the case may have been, the 'milestones' identified in the March 1996 ZOPP passed without delivery and allegations were for the first time made that GtZ/TRANSFORM was 'colluding' with the NPB<sup>34</sup>. The most immediate consequence of these events was the declaration of a bilateral planning process by the Makuleke and the emergent FoM structure – thereby excluding TRANSFORM from what was some three years later to become a core activity<sup>35</sup>.

In stark contrast with the pressures to which the Makuleke were being exposed the Minister of Land Affairs in July 1996 stated on television news that "the land in the KNP that was taken from the Makuleke community, has to be given back to them". They should then be allowed to "decide whether they want to own the land as part of the Park or whether they would like to manage it to their own benefit (Hanekom, D. 1996)"

Mixed messages were therefore being sent from the policy level and it appeared that the Minister's position on the Makuleke claim differed from that held by his own department.

In November 1996 another TRANSFORM planning workshop was held, this time in Johannesburg with formal NPB participation along with that of GEM, DLA and DEAT. The workshop's objective was to *strengthen the multi-stakeholder structures* and communications in support of the three TRANSFORM pilot project areas. NPB participation was welcomed as a 'positive change' that would 'change the scope of the project' (GtZ. 1996: 7). The GtZ programme manager stated that:

*A lot of mistrust existed between the different stakeholders, especially between the communities and the people from the conservation agencies, when the project started. Now they are all considered as partners and are sitting around the same table (GtZ. 1996: 7).*

Ironically the ZOPP workshop took place four days before the NPB's first formal response to the Makuleke land claim. In its submission to the LCC the NPB strongly urged that the Pafuri retained its Schedule-1 status<sup>36</sup>.

*We would like to strive for partnerships without eroding the integrity of the national park and without necessarily accepting the validity of particular land claims (...) I, for the life of me cannot see why in the spirit of co-operation an ecotourism facility with traversing in the Makuya Park cannot be developed on mutually acceptable conditions to the benefit of all concerned (Robinson. 1996: 1).*

Translated, the statement meant that ownership of the land should not be returned to the Makuleke and that they should not be granted commercial rights in the Pafuri, but on the periphery in the Makuya Park. Here their interests would be 'consolidated' with those of other neighbouring communities. A community lodge would be run by the NPB, the provincial government and a private sector operator, with 'some share for the community', while the Madimbo Corridor section would be included into the KNP<sup>37</sup>. Options such as financial compensation or alternative land would also be investigated (Nel. 1997).

The justification for this position was the unique value of the Pafuri to conservation and its status as a *national asset*. Apart from the 'sensitive' ecology of the Pafuri and its consequent, 'appropriate', designation as a 'wilderness' area, emphasis was now also being placed on the 'limited' development potential of the area. It was also necessary to 'treat all communities the same (Robinson, 1996: 11)' and that what was 'negotiated with one group must be able to be replicated and applied in other areas and other national parks (Robinson, 1996: 11)'.

The Makuleke were, therefore, not to be accorded any special status. Through various interlocutors, they were being sent the clear message that they had to settle *outside* of the LCC. If they were not to do so they would face a 'drawn out' process (Nel, 1997) and run the risk of losing everything by having the claim contested in the Land Claims Court. "Even if you were to win the case", as an NPB consultant stated, "the state will still expropriate the land<sup>38</sup>". Even though the Makuleke had, from the first day of negotiations, committed themselves to conservation as the land use form, a hard, professionally conducted distributive bargaining process<sup>39</sup> ensued that was to last almost all of two years.

Most interestingly the NPB states in its submission that, though it was previously agreed that negotiations regarding the potential development of a

community game lodge would be suspended until after the land claim was finalised, “these did proceed through facilitation of outside agencies such as the GtZ (Robinson, 1996: 5)”. One of the ways in which this was done, the NPB intimated, was through the March 1996 ‘workshop’ at Makuleke which “investigated various concepts of development as well as direct needs of the community.”<sup>40</sup>

### c. The negotiation phase

At the beginning of the formal negotiations with the NPB the Makuleke were in a feeble bargaining position. They did not emerge unscathed from the Madimbo Corridor debacle and a clear need existed for the Makuleke to rebuild credibility as conservationists. Apart from the fact that they felt it necessary to build up conservation management capacity, the Training Project was considered a visible way of committing themselves to conservation.

Maintaining the momentum behind the Training Project was however proving difficult. By the beginning of 1997 GtZ/TRANSFORM had further reduced the projects funding and formal DLA support was not forthcoming. This made additional external support essential for the project’s survival, but most funders appeared unwilling to get involved in what appeared to be a highly controversial situation. At the time it seemed that the mere idea of a rural community gaining ownership over so valuable a piece of conservation land was inconceivable.

In the course of the negotiations it also became apparent that the Makuleke’s inability to make authoritative statements about the conservation and development of the Pafuri was further weakening their bargaining position. The TRANSFORM programme was originally conceived of as having to provide the three pilot communities with restitution related support and towards the middle of 1997 the GtZ was approached with a proposal for a ‘Planning Project’. Making use of FoM as the service providers the project would have provided the Makuleke with a stronger *bargaining position* vis-à-vis the strongly held and authoritative NPB position.

This was not to be. Whereas the NPB had by now become a formal TRANSFORM participant, the FoM representative had by this time been asked to withdraw from the steering committee because of a ‘conflict of interests’. FoM as a whole, in fact, was perceived to have a commercial interest in the outcome of the land claim<sup>41</sup>. When faced with the Planning Project, therefore, the reaction was that the involvement of FoM in the commercial planning of the Pafuri also represented a conflict of interests and that the GtZ should contract a team of ‘neutral’ technical experts.

The Makuleke and FoM position was that the technical planning, especially in the context of a negotiation process, cannot be considered ‘neutral’. Whatever ‘plan’ was produced had to be a distinctively *Makuleke* plan, leaving room for the give and take of a distributive bargaining process<sup>42</sup>. Unwilling to hand the technical planning over to TRANSFORM, the Makuleke withdrew their funding application and communicated that there was to be no further TRANSFORM ‘involvement’ in the land claim. This precipitated yet another round of intense micro-politics that filtered through an extended network of roleplayers and observers. Opinions circulated that

the Makuleke land claim was being ‘manipulated’ as a result of ‘commercial interest’ in the outcome of the negotiations. The land claim process, in fact, was ‘in trouble’.

In trouble it was indeed. All the while the Makuleke were facing a well-resourced, professional opponent backed by key roleplayers in the conservation establishment. In spite of the Makuleke’s initial concession on the conservation status of the land the NPB negotiators were unwilling to budge on key issues such as land ownership and commercial rights for the Makuleke. Community ownership of the land would have entailed reclassifying the Pafuri from a schedule 1 protected area, the highest level of protection available in South African legislation, to schedule 2b status, a contractual national park. Maintenance of the schedule 1 status was an issue on which the NPB negotiators were unable to budge, especially as only schedule 1 protected land was exempted from new mining legislation and policy<sup>43</sup>.

It would have been possible at this stage to reach a viable compromise whereby the Makuleke gave up their demand for ownership in exchange for substantial commercial rights. The NPB negotiators were unwilling, however, to move on the supposed wilderness status of the Pafuri and insisted on a minimalist deal revolving around the Makuya Park. In classic distributive bargaining terms this meant that the NPB was unwilling to grant the Makuleke their ‘bottom line’ and it appeared as if the negotiations were set to break down.

Over time a number of factors had nonetheless tilted the odds in the favour of the Makuleke. First and foremost was the free legal and technical support from the LRC and FoM without which the Makuleke would have been unable to negotiate their interests effectively. FoM also constituted an important link between the Makuleke and powerful roleplayers on the outside. Constructive engagement with NGOs like WESSA (Wildlife and Environment Society of South Africa), for example, resulted in an exchange of information that was eventually to address most of the major environmental concerns raised by the conservation establishment (Brown 1998: 9). Importantly it was possible to gain EWT (Endangered Wildlife Trust) co-funding for the Training Project in 1997 and by 1998 they had taken over the entire budget.

EWT support also came at a strategic moment and the favourable media coverage that followed enhanced the Makuleke’s bargaining muscle. The Makuleke’s relationship with the conservation establishment grew, with a Makuleke representative becoming a key role-player in the ART facilitated community delegation to the 1996 CITES convention<sup>44</sup>. CITES and its aftermath enabled the Makuleke not only to establish important political relationships, but also to entrench themselves as emergent, and not to be overlooked, roleplayers in the South African conservation scene. Just as the NPB had tried to reinvent itself with respect to a social orientation, the Makuleke were now able to reinvent themselves with respect to their conservation orientation.

Gaining confidence as they did so the Makuleke were progressively worming themselves out of the isolation of their position. This was facilitated by political weakness on the part of the NPB. In February 1997, following supposed disagreements with the NPB Board of Trustees on commercialisation of the national parks, the NPB’s CEO resigned. His resignation initiated a fragmented interregnum lasting approximately eight months before a successor was appointed. In consequence

the NPB negotiators' principals had changed three times in the course of the bargaining process which in itself constituted a disadvantage in the negotiations. The interregnum not only gave the Makuleke the much needed time to build their bargaining power, but also provided space for the legal and policy arguments in support of actual restitution to be properly developed.

A key factor appears to have been the existence of *political will* on the part of key governmental role players. As hopes for a negotiated settlement faded, rumours of a ministerial and presidential enquiry into the claim began to make the rounds. This indicated that the Makuleke claim had been selected as a key case to be resolved and that political pressure on the NPB to settle was mounting. For some time in fact the NPB had been under pressure to negotiate a joint position with the other affected government departments under the auspices of the DLA – and the DLA, in turn, to take responsibility for the process.

Due to the nature of negotiations information about the internal dynamics of the relationship between the Commission, the DLA and the NPB were not readily accessible. Nor was it possible to monitor the interdepartmental policy development process, such as the supposedly intense negotiations between the LLC, DLA and the DEAT and other departments<sup>45</sup>. The details of the internal policy development process aside, the Land Claims Committee of the NPB Board of Trustees<sup>46</sup> made a strong intervention in the land claims process after being addressed by the Land Claims Commissioner. All claimants involved in cases against national parks were invited to present their cases and toward December 1997 the Board published new policy guidelines for land claims.

The NPB, renamed SANP (South African National Parks) shortly thereafter, had in fact executed what appeared to be a fundamental policy shift. A completely new dynamic had emerged and, in a synergistic atmosphere, a negotiated settlement emerged over a period of four months.

#### **d. The post-negotiation phase**

“You mean to tell me that the park is actually being extended?” a journalist asked at a joint SANP-Makuleke media briefing on their negotiated settlement. He was referring to the five thousand hectares of Madimbo Corridor land that would be incorporated into the “Makuleke region of the KNP”, as the Pafuri was henceforth to be called. Far from ‘tearing the park apart’ the land claim had been settled to the benefit of the KNP. “The negotiation of this agreement has been a huge success for conservation,” said a WESSA spokesperson. “This sets an excellent precedent for land claims in other important conservation areas... (Cooper 1998: 7).” Apart from isolated comments in the media, like “Goodbye Kruger National Park” in a letter from a distraught conservationist, surprisingly little negative sentiment was heard.

##### **The Makuleke Agreement**

*In terms of the agreement the Makuleke regains ownership of the Pafuri Triangle (renamed ‘the Makuleke region of the KNP’). The land may however only be used for conservation purposes in addition to which the Makuleke are obliged to enter a 50-year contractual park agreement with the*

*SANP, renewable after 25 years. Even should the contractual park relationship were to come to an end, the state will continue to have an obligation to ensure that effective conservation management takes place.*

*This means that the Makuleke region will be declared a schedule 2b national park and is to be managed through a Joint Management Board (JMB) as an integral part of the KNP. The KNP will furthermore remain responsible for the day-to-day management of the land, but as an agent of the JMB. Decision making in the JMB is to be by consensus with a series of deadlock breaking mechanisms.*

*In exchange The Makuleke gain exclusive commercial rights to the area and a variety of other cultural and use rights. There would furthermore be no 'human exclusion zones' and the Makuleke could theoretically identify any activity in the area as 'commercial'.*

*The relationship between the JMB partners, for a variety of reasons, is interesting.*

- *First of all, it can be described as an agreement between equals. The agreement thus transcends the traditional skewed power relations between parks and people.*
- *Second, the state's vested interest, namely biodiversity conservation, is made explicit and is protected through various conservation guarantees that have been built into the agreement.*
- *Third, clear boundaries have been imposed between the partners, making it easier to untangle SANP and Makuleke vested interest. There will, for example, be no SANP involvement in the community development or commercial aspects. Structurally the agreement leaves little scope for the desire to 'control' in order to achieve conservation objectives.*
- *Fourth, the agreement can be described as flexible, a characteristic that makes it possible to aim at the development of a meaningful long-term relationship – but one that presupposes ongoing negotiations between the two 'partners'.*

*The agreement, in other words, is structured in such a manner that ongoing negotiation between the Makuleke and the NPB becomes inescapable.*

The sudden interest demonstrated by various conservationists, academics and researchers indicated that the Makuleke were rapidly being promoted to 'international case study' status. The Makuleke Agreement was accordingly described by various observers as a 'unique' or 'world class' agreement that compares favourably with 'internationally known' CBNRM cases like Uluru and Kakadu in Australia (Koch, 1998).

At the formal signing ceremony (Steenkamp 1998) that took place in April 1998 the message that came was clear: 'justice' had been achieved and 'delivery' had taken place with the transfer of land ownership to the community. With the conservation status of the Pafuri ensured and the park expanded into the Madimbo Corridor, conservation had also 'won the day'. The Minister thanked the Makuleke for their foresight and wisdom in 'handing the land back to the park' and for including the Madimbo Corridor land into the deal. The new SANP CEO emphasised that something like the Makuleke removal will 'never again' take place.

At the end of a controversial process everything was therefore 'under control' and emphasis was now firmly placed on a *harmony of interests* between people and conservation. Furthermore, the controversy having been brought to an end, the Makuleke experienced a wave of donor (and private sector) interest. It had become a 'harmonious' and therefore fundable process.

In subsequent meetings with SANP officials the emphasis was indeed placed on achieving a ‘harmony of interests’ with the community. In the JMB meetings that followed the conservation officers bent over backward to ensure that the process remained as ‘harmonious’ as possible. A high ranking SANP official explicitly denied in fact the existence of ‘conflicts of interest’ (Steenkamp 1999a). Under a policy directive from the top conservation officers appeared uncomfortable with the merest mention of ‘conflict’.

## **4. Analysis**

### **a. Introduction**

It was at the outset argued that:

*if CBNRM or ‘participation’ interventions do not:*

- 1) give explicit recognition to the existence of ongoing conflicts of interest between communities, on the one hand, and conservation interests (including the state, NGOs and other interest groups), on the other,*
- 2) and if those conflicts of interests are not dealt with, formally and informally, by structuring the associated institutions and processes accordingly,*
- 3) then existing power relations between parks and people are likely to be strengthened to the detriment of the people, ‘project success’ and, eventually, conservation itself.*

It was also pointed out that two parallel running process unfolded at Makuleke over the period in question: the formal land claim process facilitated by the LCC and a development initiative facilitated by TRANSFORM. Of interest now is how conflicts of interest and power relations were dealt with under the auspices of these two discrete, yet interlinked, processes.

### **b. Power relations and the bargaining process**

#### ***Conflicts of interests***

The TRANSFORM process did not give *explicit* recognition to the existence of a conflict of interests between the Makuleke and the then NPB and served rather to mask the existence thereof. It did so in part by emphasising the *harmony of interests* that was supposed to exist between the two parties when one was in reality dealing at that time with a fundamental *conflict of interests*: both wanted ownership of and control over the Pafuri Triangle. The LCC process, to the contrary, gave very explicit recognition to the existence of a conflict of interests between the Makuleke and the NPB.

#### ***Institutionalisation***

Through TRANSFORM the Makuleke were drawn into a *multi-stakeholder* planning and decision-making process. All ‘stakeholders’ appeared on the surface to have been treated as co-equal ‘partners’ in the decision-making process. Little to no distinction appears to have been made between different categories of participation (e.g. ‘stakeholders’ versus mere ‘roleplayers’). As conflicts of interest were not dealt with explicitly it was further not possible to determine whether any party’s ‘stake’ in any particular process was appropriate/legitimate or not.

No attempt further appears to have been made to distinguish between different categories of participation (roles) in different contexts (e.g. NPB participation in high level planning versus the community level ZOPP). This appears to relate directly to an ambiguous situation in which the NPB regarded the GtZ as somehow ‘facilitating’ further discussions between themselves and the Makuleke, while a formal land claims process was simultaneously being dealt with through the responsible statutory body, the LCC. This probably contributed toward the Makuleke coming to regard the GtZ as ‘collaborating’ with the NPB.

In the LCC facilitated process the opposite was the case. Because the conflict of interests between the community and the NPB had been made extremely explicit it was possible to structure the process accordingly. The Makuleke were clearly defined as ‘the claimants’ whereas the NPB and other state parties acted as the ‘respondents’. The result was a formal mediation process in which each party had the right to independent legal aid and technical support. Other indirect ‘stakeholders’, such as environmental NGOs, were recognised, but their rights in the process were clearly defined and restricted. Conflicts of interest as well as the degree to which certain sets of interests are appropriate in any particular setting were therefore rigorously institutionalised

### ***Power relations***

It is here argued that the TRANSFORM process achieved the opposite from what it was intended to: namely ‘empower’ the community. Among others TRANSFORM actually empowered the GtZ and the NPB. In spite of the alleged lack of commitment on the part of the DLA to TRANSFORM, their grudging endorsement thereof placed the GtZ in a very powerful position. Their activities on the ground were somehow vested with a ‘legitimacy’ it would otherwise not have had. This made it difficult to challenge formal decisions taken by TRANSFORM.

The power relations inherent in this arrangement was strengthened in view of the fact that the GtZ was active on different levels of the environmental decision making process (the policy level and community level), thereby fulfilling a kind of ‘crossover’ function. A key factor in GtZ power, however, was the simple fact that they, in addition to conducting/ facilitating the community level planning, also controlled the funding needed for implementation. They therefore had the power to ‘shape’ the overall process.

As a ‘stakeholder’ in the ‘multi-stakeholder’ forum the NPB also gained *more* power over the community than they would otherwise have had. Apart from informal liaison with TRANSFORM, they were now able to exercise a *direct* influence over

the community development process and to steer it into directions perceived not to be inimical to their interests. Given the fact that fundamental conflicts of interest existed between the NPB and the Makuleke, existing power relations between parks and people can be said to have been strengthened to the detriment of the people. The multi-stakeholder process initiated by TRANSFORM therefore tended toward becoming a “powerful constellation of control (Ferguson, 1990)” that actually *reduced* overall community decision-making power and control over their environment. The multi-stakeholders structure meant that decision making power was removed from the ground level and transferred to a bureaucratic structure within which the isolated community voice was effectively diluted.

Guided by the legislation the LCC process, again to the contrary, was explicitly directed at changing old power relations. Because the conflicts of interest had been recognised and properly institutionalised, the LCC was able to make deliberate strategic interventions aimed at levelling the playing ground and enhancing the community’s bargaining power. Needless to say this explained some of the tensions between the LCC and the NPB negotiators and other state agencies that became apparent in the course of the negotiations. Another significant factor that contributed toward an improvement of the Makuleke bargaining position was their access to independent technical support through FoM.

### **c. Discussion**

It should be clear that the TRANSFORM and the LCC processes overlapped and in a somewhat contradictory manner. At the beginning of the negotiations the NPB was able to actively pursue its objectives through the TRANSFORM process. This was one of the factors that contributed toward the powerful NPB bargaining position relative to the weak and isolated position in which the Makuleke found themselves.

The NPB objective at this stage was accordingly to maintain full control over the Pafuri Triangle (ownership role) and to marginalise the community interest. In terms of the SANP/NPB’s original objectives the Makuleke agreement represents however everything but a win-win solution. The SANP failed to maintain exclusive control over the Pafuri Triangle and failed to restrict community interests to the periphery of the park. They were also unable to avoid the setting of a ‘negative’ precedent with the deproclamation of a part of a schedule-1 park. In addition to all of this the success of the Makuleke land claim probably contributed to the wave of new claims for KNP (and other parks) land that emerged just before the deadline for submissions<sup>47</sup>.

In the course of the negotiations the NPB, as did the Makuleke, however changed their objectives. As the negotiations progressed the NPB’s bargaining power relative to that of the Makuleke was progressively eroded. This was at first due to the Makuleke’s insistence to negotiate under the auspices of the LCC and later due to mounting political pressure toward a settlement. Whereas the Makuleke expanded their original objective of land use to that of land ownership, the NPB shifted theirs towards maintaining biodiversity conservation (guarantor role) in the Pafuri. Both parties therefore adapted their objectives because their expectations of success (which reflects their bargaining power) had changed<sup>48</sup>.

The negotiated ‘win-win solution’ therefore means that the NPB/SANP’s *redefined* objectives and interests had been accommodated. The agreement not only demonstrated the SANP’s commitment to new policies, but they were now party to a contractual park agreement of international significance. The Makuleke had in turn gained access to a significant economic resource and the opportunity revitalise intensely cultural linkages with the land.

The outcomes of the land claim also met most of the objectives of roleplayers like the LCC, the LRC and others such as FoM. The LCC did not however get the clear policy case study they may have hoped for. Though several other claimants were now simply demanding settlement along the lines of the Makuleke Agreement, the limited replicability of the Makuleke Agreement has become apparent. It was very much shaped by conditions and factors specific to the Makuleke claim and cannot simply be transferred to other areas.

The most important and significant outcome achieved, was however the explicit restructuring of the power relations between the park and the people. The SANP’s interests have been clearly restricted to biodiversity conservation. They have no involvement in the community development process other than in the case of specific conservation related activities such as the ranger training provided to young community members. This makes it possible for both parties to negotiate the implementation of the agreement as truly equal ‘partners’.

#### **d. Conclusion**

Popular CBNRM philosophy propagates the idea that there should be a ‘harmony of interests’ between people and parks. Whereas this makes sense as a policy level objective, it does not follow that such a harmony of interests comes into being on a ground level simply because the policy makers will this to be the case. It should be clear that the NPB’s participation in the development planning process at Makuleke actually promoted NPB interests at the cost of Makuleke interests. What actually transpired was ‘conservation participation in community development’ rather than the other way around and ‘CBNRM’ merely served to mask the aggressive advance of NPB interests.

How is it possible for processes like this to take place when all the roleplayers are out to ‘help the community’? CBNRM initiatives are often component parts of broader development plans – they are ‘derived’ from overhead planning exercises such as transfrontier conservation development or Spatial Development Initiatives. CBNRM ideas are in fact externally conceived blueprint development interventions *par excellence*. Though they are conceptually supposed to be in the interests of ‘beneficiary communities’, as are almost all such interventions, the CBNRM interventions represent development blueprints that are imposed onto the landscape subsequent to a lengthy, *external* planning process. They often result in *externally driven* development interventions.

Conservation agencies or NGOs, furthermore, are often the authors of such plans as a result of which they gain a ‘stake’ in the implementation thereof. In the

course of this process conservation interests often exercise significant direct or indirect control over, among others, the *allocation of funding*. Sometimes, as was the case with the Makuleke, it is policy-level roleplayers themselves, the planners in other words, that also facilitate the community level process (Bryant, 1997). The conditions are thereby created under which increasingly only those roleplayers sanctioned by the policy level are able to engage the communities with any degree of credibility and sustainability thereby enhancing the top-down nature of the process.

The planning process, in other words, is not as 'objective' and 'technical' as it is portrayed to be.

- First, the dynamic created reveals the inadequacy of distinctions being made between the 'top-down' blueprint planning process and the 'bottom-up' community-based planning process.
- Second, as the boundaries between top-down and bottom-up are obscured, it becomes structurally easier for the conservation interests to steer community development processes in directions perceived to be less inimical to their interests.
- Third, in practical terms this amounts to taking the blueprint all the way to the ground. There is no midway meeting of top-down and bottom-up planning and little scope exists for negotiating the framework within which the development intervention takes place.

The fact that conservationists and other planners construct 'blueprints', an activity usually vested with negative meaning in the development literature, is not in itself problematic. Blueprint planning is actually a perfectly legitimate process. The problem lies not with blueprint planning as such, but with the manner in which such plans are translated into reality on the ground.

The manner in which it is done appears to ignore the existence of sometimes significant conflicts of interest between people and parks. In spite of the insistence that 'mobilisation' of community participation constitutes 'early involvement in the planning process', one is actually only dealing with the operationalisation of decisions that have already been taken. It remains paternalistic in spite of improved rhetoric and technical planning methods. 'CBNRM' thus runs the risk of continuing the well-established South African tradition of 'native administration' thereby contributing to the failure of CBNRM itself.

In the case of the Makuleke an unusual alignment of forces helped to overcome the resistance generated by their claim. What emerges clearly from the case is that the signing of the Makuleke Agreement did not amount to a suspension of the conflict of interests between themselves and the conservation establishment. This is exemplified by the fact that land ownership was returned to the Makuleke only on condition that they entered a contractual park agreement with the SANP. At least the Agreement not only created a new balance of power between the community and the park, but entrenched a clear structure within which ongoing bargaining between the two parties is to take place.

The Makuleke experience therefore points at the need to develop more explicit *bargaining models* for CBNRM in which more attention is paid to the formal and informal power relations that exist between parks and people.

**List of acronyms used in the text:**

<b>CAMPFIRE</b>	<b>Communal Areas Management Programme for Indigenous Resources</b>
<b>CBNRM</b>	<b>Community-based natural resource management</b>
<b>CEO</b>	<b>Chief Executive Officer</b>
<b>CITES</b>	<b>Convention on the International Trade of Endangered Species</b>
<b>CPA</b>	<b>Communal Property Association</b>
<b>DEAT</b>	<b>Department of Environment Affairs and Tourism</b>
<b>DLA</b>	<b>Department of Land Affairs</b>
<b>EWT</b>	<b>Endangered wildlife trust</b>
<b>FoM</b>	<b>Friends of Makuleke</b>
<b>GEM</b>	<b>Group for Environmental Monitoring</b>
<b>GtZ</b>	<b>Gesellschaft fuer technische Zusammenarbeit</b>
<b>JMB</b>	<b>Joint management board</b>
<b>KNP</b>	<b>Kruger National Park</b>
<b>LCC</b>	<b>Land Claims Commission</b>
<b>LRC</b>	<b>Legal Resources Centre</b>
<b>NGO</b>	<b>Non-governmental organisation</b>
<b>NPB</b>	<b>National Parks Board</b>
<b>SANP</b>	<b>South African National Parks (new NPB name)</b>
<b>TFCA</b>	<b>Transfrontier conservation area</b>
<b>WESSA</b>	<b>Wildlife and environment society of South Africa</b>
<b>ZOPP</b>	<b>Ziel-orientierte Project Planung: Goal-orientated project planning, a German version of the Logical framework analysis.</b>

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<sup>1</sup> The Kruger National Park is South Africa's best known and largest game reserve.

<sup>2</sup> Towards the end of the 1960s the Rhodesian War was intensifying and cross-border raids into South Africa took place. The Madimbo Corridor was accordingly placed under the then South African Defence Force (currently South African National Defence Force).

<sup>3</sup> The removal coincided with a hectare-for-hectare land swap between the NPB and the then Department of Bantu Affairs. Some 24 thousand ha were excised from the KNP and added to the emerging homeland of Gazankulu. The Makuleke were settled on some 6 thousand ha, whereas the rest of the land was used for the resettlement of other ethnic Tsonga-Shangaan speakers from the predominantly Venda-speaking region in the north. All of the land was placed under the control of the Mhinga Tribal Authority.

<sup>4</sup> The conservation status of the Pafuri Triangle has a long and chequered history. It was declared a provincial nature reserve in 1933, subsequent to which various attempts were made to enforce effective conservation management and to incorporate it into the KNP. In the face of ongoing Makuleke occupation of the land, these efforts produced little more than increasing tension between the conservation officials and the people. In the run-up to the 1969 removal, therefore, it was finally decided that continued Makuleke occupation of the land was incompatible with the conservation management objectives.

<sup>5</sup> South Africa's first non-racial elections were held in 1994 and led to the establishment of a Government of National Unity (GNU) with the African National Congress (ANC) as the majority party. In 1996 the historically white National Party stepped out of the GNU.

<sup>6</sup> The 1913 Land Act resulted in the first massive resettlements in South Africa and was selected as the cut-off date for land claims. Nobody is able to claim compensation for land lost before 1913.

<sup>7</sup> In 1998 the NPB's name was changed to South African National Parks (NPB).

<sup>8</sup> Gesellschaft fuer technische Zusammenarbeit (Society for technical Co-operation)

<sup>9</sup> Training and Support for Resource Management

<sup>10</sup> The Makuleke are a 'composite' community that has nonetheless managed to forge a strong common identity – a distinctive 'Makuleke' identity. They were relocated as a 'community', but other ethnic Tsonga-Shangaan speakers from 'Venda-speaking' areas were resettled with them in the Ntlaveni District of Gazankulu. These additions to the original Makuleke core group, with its strong affiliation to the existence of a separate Makuleke Chieftaincy, were assimilated quite effectively.

<sup>11</sup> Centrifugal tendencies do however also exist and the hegemony of a common Makuleke identity does tend to unravel on the fringes. The maintenance of the core identity appears to be closely linked with the chieftaincy dispute with Mhinga and competition for access to external resources. The structural tensions generated by the land claim process required intense and ongoing internal negotiations. Both centrifugal and centripetal forces were at work here and Makuleke decision-making went through cycles of coherency and fragmentation. In general, though, the leadership displayed a remarkable ability to 'pull things together' so as to be able to deal with the issues confronting them in a unified manner, with the Chieftaincy acting as a strong integrative force.

<sup>12</sup> As pointed out above this was not an unlimited power. The DLA was the actual respondent to the claim with the task of negotiating a joint position for all government departments.

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<sup>13</sup> R. Rammutla (1997: pers. comm.) Mr. Rammutla was a senior NPB official involved in the land claim negotiations.

<sup>14</sup> R. Robinson (1996: pers. comm.) Dr. Robinson was NPB CEO until 1997.

<sup>15</sup> The Pafuri was considered the 'heart' of a vast transfrontier conservation area (TFCA) that would consolidate the KNP with conservation areas in Mozambique, Zimbabwe and Botswana.

<sup>16</sup> Senior SANP official (1996: pers. comm.)

<sup>17</sup> In the case of the Makuleke the Regional Land Claims Commissioner: Northern and Mpumalanga Provinces was responsible for the facilitation of the land claim negotiations.

<sup>18</sup> National departments such as Environment Affairs & Tourism (DEAT), Department of Water Affairs & Forestry (DWAF), Mineral & Energy Affairs (MEA), the South African National Defence Force (SANDF) and provincial departments such as Northern Province Nature Conservation, Environment Affairs & Tourism, Veterinary Services, etc.

<sup>19</sup> It was initially conceived of as a restitution related support programme that was to focus on three pilot project areas: Makuleke, the Richtersveld National Park (Northern Cape Province) and Kosi Bay (Kwa-Zulu Natal Province), all three of which involved community claims to, or ownership of, conservation land.

<sup>20</sup> This partnership did not appear to have been a successful one and the GtZ eventually (four years later) entered a new agreement with the Department of Environment Affairs and Tourism (DEAT).

<sup>21</sup> It must be noted that the author was directly involved in the land claim negotiations as a member of FoM.

<sup>22</sup> This relates to the 'Makuleke Ecotourism Project', which is discussed further below.

<sup>23</sup> Duo later entered a joint venture agreement with Moonstone, an Australian mining company.

<sup>24</sup> Though the Madimbo Corridor was managed by the SANDF, it had also been declared a provincial nature reserve, the Mashakathini Nature Reserve.

<sup>25</sup> In a media battle between the NPB and Madimbo Diamond Corporation over the granting of diamond prospecting rights in the Madimbo Corridor, Chief Jack Mutele supported the NPB's 'ecotourism' development option (Koch, E. 23/8/95 – Sapa local; Molefe, R. (13/11/1995) The Sowetan: p. 17.). His willingness to submit his land to a contractual park agreement is also mentioned in Mall-Martin, A. & Lorimer, R.J. 1995. Op. cit.

<sup>26</sup> Whereas it was clear from the outset that the Mutele claim to the Triangle was based on pre-1913 occupation and would not succeed, the situation with respect to the Makuleke slice of the Madimbo Corridor, immediately adjacent to the KNP, was more ambiguous.

<sup>27</sup> DLA Report no. 115/95. The report did not, however, constitute an official DLA position and could be interpreted as indicative of uncertainty on DLA's part on how to deal with the Makuleke land claim

<sup>28</sup> Anonymous, 1997: pers. com. A consultant working in the Madimbo Corridor at the time.

<sup>29</sup> Makuleke 'greed', for example, was portrayed in a 50/50 programme on the land claim.

<sup>30</sup> Distributive bargaining, also described as positional bargaining, is used mainly in union-management disputes. Its value as a tool for dispute resolution has in recent years been questioned as it explicitly aims at maximising one's own benefit from an agreement at the expense of those of the opposing party: in other words, "win-lose" situations determined largely by the bargaining power of the winner.

<sup>31</sup> A ZOPP ("Ziel-orientiertes Project Planung" or "Goal-orientated Project Planning") is a logframe approach to planning commonly used by development agencies. It is implemented by a professional facilitator and results in the production of highly structured and integrated development plans.

<sup>32</sup> Precursor to the Communal Property Association.

<sup>33</sup> At this late stage the Makuleke were informed that it was not GtZ policy to fund tertiary education.

<sup>34</sup> In 1997 TRANSFORM nonetheless made a concerted effort to revive their involvement at Makuleke, resulting in the launching of a small business development project focusing on

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women. To all appearances the ‘weakness’ of the Makuleke claim, however, continued to act as the principle governing GtZ/TRANSFORM involvement and by that time the relationship with the community had reached an all time low.

<sup>35</sup> In 1997 TRANSFORM nonetheless made a concerted effort to revive their involvement at Makuleke. This resulted in the launching of a small business development project focusing on women.

<sup>36</sup> Makuleke ownership of the Pafuri meant that the area would be reclassified as a Schedule 2b park, thereby losing its Schedule 1 status, the highest level of protection possible in South African legislation.

<sup>37</sup> Anonymous. (consultant to the NPB) 1997: pers. com.

<sup>38</sup> Lorimer, R. 1997: pers. com.

<sup>39</sup> Given the fact that the NPB was following a distributive bargaining strategy, it was inappropriate of the Makuleke negotiation team to concede immediately on the conservation status of the land. A basic principle of distributive bargaining is that one should hide one’s true objectives for as long as possible while trying to clarify the position of the opponent. See Atkinson 1975.

<sup>40</sup> Curiously it is added that the KNP warden had met with the German Embassy and that they had agreed to visit the land claimed.

<sup>41</sup> This is due to the fact that FoM consisted in the main of a closely linked group of consultants, one of whom had originally approached the Makuleke with the Ecotourism Proposal.

<sup>42</sup> From a negotiations perspective any Makuleke development plan had to contain ‘optimal’ and ‘fall-back’ options. If this was not done, then the chances of a deadlock emerging were enhanced because of the lack of scope for movement on the part of both parties.

<sup>43</sup> Towards the end of the negotiation process a complex agreement had to be worked out with the Department of Mineral and Energy Affairs. A solution had to be found that would remain within the parameters of new mineral resource policy – which promotes the exploitation of all available mineral resources – while simultaneously giving the Pafuri adequate protection against mining.

<sup>44</sup> As a result of the role played by the Makuleke representative to CITES, he was given the EWT’s ‘1997 Top Ten Conservationists of the Year Award’.

<sup>45</sup> In negotiation terms it is considered bad form to establish channels of communication with the opponent’s principals.

<sup>46</sup> Under the leadership of the erstwhile GEM director (then a member of the Board of Trustees).

<sup>47</sup> A cut-off date for the submission of land claims was set in 1999.

<sup>48</sup> Changing objectives/targets due to changed expectations of success is a classic outcome of a distributive bargaining process.